

HOUSE BILL No. 1260

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-1-56.

Synopsis: Benefit corporations. Allows a business entity to incorporate as a benefit corporation under Indiana law.

Effective: July 1, 2014.

Cox

January 14, 2014, read first time and referred to Committee on Judiciary.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1260

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-1-56 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2014]:

4 **Chapter 56. Benefit Corporations**

5 **Sec. 1. This chapter applies to all benefit corporations. If a**
6 **corporation elects to become a benefit corporation under this**
7 **chapter, it is subject in all respects to this article, except to the**
8 **extent this chapter imposes additional or different requirements,**
9 **in which case the requirements of this chapter apply.**

10 **Sec. 2. (a) As used in this chapter, "benefit corporation" means**
11 **a for profit corporation organized under and subject to the**
12 **requirements of this article that is intended to produce a public**
13 **benefit or public benefits.**

14 **(b) The term does not include a nonprofit public benefit**
15 **corporation incorporated under IC 23-17.**

16 **Sec. 3. As used in this chapter, "public benefit" means a positive**



effect, or reduction of negative effects, on one (1) or more categories of individuals, entities, communities, or interests (other than shareholders in their capacities as shareholders), including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature.

Sec. 4. As used in this chapter, "public benefit provision" means a provision within articles of incorporation described in section 6 of this chapter.

Sec. 5. As used in this chapter, "third party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that is:

- (1) comprehensive, in that it assesses the effect of a benefit corporation and its operations upon the individuals, entities, communities, and interests materially affected by the benefit corporation's conduct;
- (2) developed by a business entity that is not controlled by a benefit corporation;
- (3) developed by a business entity that:
 - (A) has access to necessary expertise to assess overall corporate performance of furthering public benefits; and
 - (B) uses a balanced multiple stakeholder approach to develop the standard, including a reasonable public comment period; and
- (4) transparent, in that all the following information is publicly available:
 - (A) The criteria considered when measuring the overall performance of the public benefits of a corporation.
 - (B) The relative weightings, if any, of the criteria described in clause (A).
 - (C) The identity of the directors, officers, material owners, and the governing body of the business entity that developed and controls revisions to the standard.
 - (D) The process by which revisions to the standard and changes to the membership of the governing body are made.
 - (E) An accounting of the revenue and sources of financial support for the business entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

Sec. 6. A benefit corporation shall identify within its provision of purpose under IC 23-1-21-2 one (1) or more specific public



benefits to be promoted by the benefit corporation.

Sec. 7. The name of the benefit corporation must, without exception, contain the words "benefit corporation", the abbreviation "B.C.", or the designation "BC", which is considered to satisfy the requirements of IC 23-1-23-1.

Sec. 8. (a) Notwithstanding any other provisions of this article, a corporation that is not a benefit corporation, may not, without the approval of ninety percent (90%) of the outstanding shares of each class of the stock of the corporation of which there are outstanding shares, whether voting or nonvoting, do either of the following:

(1) Amend its articles of incorporation to include a provision described in section 6 of this chapter.

(2) Merge or consolidate with or into another entity if, as a result of the merger or consolidation, the shares in the corporation would:

(A) become; or

(B) be converted into or exchanged for the right to receive; shares or other equity interests in a domestic or foreign benefit corporation or similar entity.

(b) Subsection (a) does not apply to a corporation before the corporation has received payment for any of its capital stock, or in the case of a nonstock corporation, before the time that the corporation has members.

(c) Any shareholder of a corporation that is not a benefit corporation that:

(1) holds shares of stock of the corporation immediately prior to the effective time of:

(A) an amendment to the corporation's articles of incorporation to include a provision described in section 6 of this chapter; or

(B) a merger or consolidation that would result in the:

(i) conversion of the corporation's stock into; or

(ii) exchange of the corporation's stock for the right to receive;

shares or other equity interests in a domestic or foreign benefit corporation or similar entity; and

(2) has neither:

(A) voted in favor of an amendment or merger or consolidation described in subdivision (1); nor

(B) consented in writing in accordance with IC 23-1-34-2; is entitled to an appraisal of the fair value of the stockholder's



1 shares of stock.

2 (d) Notwithstanding any other provisions of this article, a
3 corporation that is a benefit corporation may not, without the
4 approval of two-thirds (2/3) of the outstanding shares of each class
5 of the stock of the benefit corporation of which there are
6 outstanding shares, whether voting or nonvoting, do either of the
7 following:

8 (1) Amend its articles of incorporation to delete or amend a
9 provision described in section 6 of this chapter or section
10 11(d) of this chapter.

11 (2) Merge or consolidate with or into another entity if, as a
12 result of the merger or consolidation, the shares in the benefit
13 corporation would:

14 (A) become; or

15 (B) be converted into or exchanged for the right to receive;
16 shares or other equity interests in a domestic or foreign
17 corporation that is not a benefit corporation or similar entity
18 and the articles of incorporation, or similar governing
19 instrument, of which does not contain the identical provisions
20 identifying the public benefit or public benefits described in
21 section 6 of this chapter or imposing requirements under
22 section 11(d) of this chapter.

23 (e) A nonprofit corporation may not be a constituent
24 corporation to any merger or consolidation governed by this
25 section.

26 Sec. 9. (a) Any share certificates issued by a benefit corporation
27 must note conspicuously on each share certificate that the
28 corporation is a benefit corporation formed under this chapter.

29 (b) Any written statement sent by a benefit corporation under
30 IC 23-1-26-7 must state conspicuously that the corporation is a
31 benefit corporation formed under this chapter.

32 Sec. 10. (a) The board of directors of a benefit corporation shall
33 manage or direct the business and affairs of the benefit corporation
34 in a manner that balances all the following:

35 (1) The pecuniary interests of the shareholders.

36 (2) The best interests of the individuals, entities, communities,
37 and interests materially affected by the benefit corporation's
38 conduct.

39 (3) The specific public benefit or public benefits identified in
40 the benefit corporation's articles of incorporation.

41 (b) A director of a benefit corporation:

42 (1) does not, by virtue of the public benefit provisions



described in section 6 of this chapter, have any duty to any person on account of:

(A) any interest of the person in the public benefit or public benefits identified in the articles of incorporation; or

(B) any interest materially affected by the benefit corporation's conduct; and

(2) with respect to a decision implicating the balance requirement in subsection (a), is considered to satisfy the director's fiduciary duties to shareholders and the benefit corporation if the director's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

(c) The articles of incorporation of a benefit corporation may include a provision that any disinterested failure to satisfy this section does not, for the purposes of IC 23-1-35-1(e) or IC 23-1-37, constitute an act or omission not in good faith or a breach of the duty of loyalty.

Sec. 11. (a) A benefit corporation shall include, in every notice of a meeting of shareholders, a statement to the effect that it is a benefit corporation formed under this chapter.

(b) A benefit corporation shall, at least biennially, provide to its shareholder a statement concerning:

(1) the benefit corporation's promotion of the public benefit or public benefits identified in its articles of incorporation; and

(2) the best interests of the individuals, entities, communities, and interests materially affected by the benefit corporation's conduct.

(c) The statement under subsection (b) must include all the following:

(1) The objectives the board of directors have established to promote the public benefit or public benefits and interests described in subsection (b).

(2) The standards the board of directors have adopted to measure the benefit corporation's progress in promoting the public benefit or public benefits and interests.

(3) The objective factual information based on the standards described in subdivision (2) regarding the benefit corporation's success in meeting the objectives for promoting the public benefit or public benefits and interests.

(4) An assessment of the benefit corporation's success in



meeting the objectives and promoting the public benefit or public benefits and interests.

(d) The articles of incorporation or bylaws of a benefit corporation may require that the benefit corporation do one (1) or more of the following:

(1) Provide the statement described in subsection (b) more frequently than biennially.

(2) Make the statement described in subsection (b) available to the public.

(3) Use a third party standard in connection with or attain a periodic third party certification addressing the benefit corporation's promotion of one (1) or more of the following:

(A) The public benefit or public benefits identified in its articles of incorporation.

(B) The best interests of the individuals, entities, communities, and interests materially affected by the benefit corporation's conduct.

Sec. 12. The shareholders of a benefit corporation owning individually or collectively, as of the date of instituting a derivative suit:

(1) at least two percent (2%) of the benefit corporation's outstanding shares; or

(2) in the case of a corporation with shares listed on a national securities exchange, the lesser of the percent described in subdivision (1) or shares of at least two million dollars (\$2,000,000) in market value;

may maintain a derivative lawsuit to enforce the requirements under section 10(a) of this chapter.

Sec. 13. Except as provided in section 8 of this chapter, this chapter does not affect a statute or rule of law that is applicable to a corporation that is not a benefit corporation.

